**TOWN OF  HARWICH**

***732 Main Street***

***Harwich, MA 02645***

**CONSERVATION COMMISSION (508)-430-7538 FAX (508)430-7531**

**HARWICH CONSERVATION COMMISSION – MINUTES**

**WEDNESDAY, OCTOBER 2, 2019 - 6:30 P.M.**

**SMALL HEARING ROOM, HARWICH TOWN HALL**

**Commissioners and Staff Present:** Chairman Brad Chase,James Donovan, John Ketchum, Stanley Pastuszak, Mark Coleman, Carolyn O’Leary, Alternate Member Ernest Crabtree and Conservation Administrator Amy Usowski.

**Audience:** Dave Michniewicz, Kyle Douglas, Ellen Geanacopoulos, Rick Judd, Peter Barnard, Dan O’Leary, Mark Burgess, Aaron Thall, Michele Hunton, Rick Judd, Swavi Osev, David Turpin, Matt Farrell, Bill & Tracy Gibson, David Byron, and Joyce Bearse.

**Call to Order**

By Chairman Brad Chase

**HEARINGS**

**Request for Determination of Applicability**

**Kyle Douglas, 334 Oak St, Map 82 Parcel T1-3.** New dwelling.

Dave Michniewicz of Coastal Engineering presented the project, explaining that they planned to avoid impacts to the wetland by routing the driveway over an easement on the abutting property. Ms. Usowski stated that there were two other areas with wetland vegetation, so the reason that this project was before the Commission is to recognize those areas, but determine that they are not significant for this project. Ms. Usowski recommended approval of the project with a Positive 2A, and a Negative 4 determination. Mr. Michniewicz gave more details on the areas with wetland vegetation.

Mr. Crabtree asked whether the wetland vegetation would make the area a wetland, and Ms. Usowski explained that the two small wetland areas only had wetland vegetation, and not wetland soils or hydrology, so they would not meet the criteria. Ms. O’Leary asked why they needed a Positive 2A determination if these are not wetlands, and Ms. Usowski responded that the approval was of the wetland delineation and the project, so the Positive 2A would be a confirmation of the delineation, and the Negative 4 would be to acknowledge that the project was outside of jurisdiction.

Ellen Geanacopoulos, abutter, stated that she was in attendance to ensure that no work would take place within the vernal pool on the property.

Ms. O’Leary moved to approve the project with a Positive 2A and Negative 4 determination. Seconded by Mr. Donovan. Motion carried unanimously.

**Mark & Lisa Hegel, 165 Gorham Rd, Map 24 Parcel R3-6.** Proposed additions.

Rick Judd of Moran Engineering and Project Manager Peter Barnard presented the project. Ms. Usowski explained that there would be two small additions to the existing structure on this property, and that the area was within flood plain but the location is fenced off so mitigation plantings may not be needed as it would not add to wildlife habitat. Ms. Usowski recommended approval with a condition requiring no chemical application on the property.

Mr. Donovan moved to approve the project with a negative 2 determination and a no-chemical-application condition. Seconded by Mr. Pastuszak. Motion carried unanimously.

**Notices of Intent**

**Thomas Dudeck, 53 North Rd, Map 19 Parcel M1.** Vegetation management and new driveway.

Dan O’Leary of O’Leary Landscaping presented the project. Ms. Usowski stated that this project was mainly removal of invasive species and replacement with natives, and replacement of the driveway with pervious material. Ms. Usowski explained that no chemicals had been used on the lawn since the spring when that condition had been put in place, and so she would recommend approval of the project.

Mr. Ketchum moved to approve the Notice of Intent. Seconded by Mr. Donovan. Motion carried unanimously.

**Requests for Certificates of Compliance**

**Thomas Dudeck, 53 North Rd, Map 19 Parcel M1.** Revetment repair.

Ms. Usowski stated that there had been some questions on the project at the last meeting, but that she had recommended approval. Mr. Crabtree stated that originally when this was approved there were conditions for the sizes of rocks and the height of the revetment, which did not match what had been built. Mr. Coleman commented that the construction of the wall as it is lent itself to failure as there was no way for water to escape if it made its way behind the wall. Mr. Pastuszak expressed that he was concerned with the height of the wall for the same reason. Mr. O’Leary stated that he would be happy to pass this information along to the owner so that they could bring this into compliance. Ms. Usowski stated that they could hold the Request until further notice.

**Notices of Intent**

**Dan & Jan Speakman, 4 Shady Dr, Map 73 Parcel X-180.** New dwelling and appurtenances.

Applicants requested to withdraw without prejudice. So moved by Mr. Chase. Seconded by Mr. Pastuszak. Motion carried unanimously.

**Wychmere Harbor Real Estate LLC, 23 Snow Inn Rd, Map 8 Parcel P2.** Seasonal deck, tiki bar, lockers and mitigation plantings. Discussion of chemical application on the property.

*Ms. O’Leary abstained.*

David Michniewicz of Coastal Engineering, Attorney Andrew Singer, and Bill Ganshirt of Wychmere Beach Club presented the project. Mr. Michniewicz explained that at the last hearing they had decided that the mitigation ratio would be increased to 6:1, and the configuration of mitigation plantings had been changes to reflect the Commission members’ comments. Ms. Usowski stated that she was pleased with the changes, but that she did not think permanent fencing would be necessary. Ms. Usowski explained that NHESP had submitted comments, and that they had recommended that beach raking did not take place seaward of the mitigation areas on the plan. Ms. Usowski recommended approval, provided that the mitigation was done as presented.

Mr. Ketchum asked whether the applicant was amendable to removing the proposed fencing, and the representatives stated that that is not a problem and that they could use symbolic fencing around the planting areas. Mr. Chase asked whether the storage lockers could be removed seasonally, and Mr. Ganshirt responded that they were anchored so they would not be removed seasonally.

Mr. Donovan moved to approve the Notice of Intent with mitigation plantings as shown on the plan and the conditions included in the NHESP letter. Seconded by Mr. Pastuszak. Motion carried, 5-0-1, Ms. O’Leary abstained.

Mr. Chase opened the discussion about chemical use on the property. Attorney Singer explained that Seth Wilkinson had been brought on recently, and would be producing a plan to address the long-term reduction of fertilizers and chemicals on the property. Mr. Chase asked if the rebuild of the beach club would occur prior to this plan, and Attorney Singer replied that it would not. Mr. Crabtree asked what they meant by ‘long-term’ reduction, and Mr. Singer explained that they were planning to reduce use over time so as not to ‘shock the system’. Mr. Crabtree stated that he was not comfortable with a long-term reduction without a set timeline, as they did not have any definitive details. Ms. Usowski requested that they update the Commission within a month of the meeting.

Ms. Usowski explained that the beach raking permit for Wychmere was from 1996, and that a Certificate of Compliance was issued in 2009, with ongoing permissions for the installation of the seasonal walkway and off-season installation of snow fencing, and ongoing beach maintenance. Ms. Usowski stated that the regulations had changed for beach maintenance, so she could work with Mr. Ganshirt to bring their beach maintenance practices into compliance with current regulations. Mr. Chase and Mr. Donovan agreed that the practices should be brought up to date.

**Aaron & Barbara Thall, 10 Chase St, Map 4 Parcel N3A.** Pier, ramp, float, vista pruning.

Mark Burgess of Shorefront Consulting was present as representative. Aaron Thall, owner, was also present. Mr. Burgess updated the Commission on the proposed changes to the plan after hearing the Commission’s comments at the last meeting and the comments that had been received from the Division of Fisheries and Wildlife, which included raising the height of the dock to 6ft above the marsh, shortening the float on the landward side to reduce the footprint, to relocate the kayak rack, and to provide shellfish mitigation on site through the town Natural Resource Director. Ms. Usowski stated that she did not see this project as having an adverse impact to salt marsh with the proposed monopile design and higher clearance. Ms. Usowski commented that the on-site shellfish mitigation should off-set the potential loss of shellfish from the structure. Ms. Usowski recommended approval of the project, but recommended that the Commission include a condition for ongoing shellfish monitoring after completion of the project on this project and future dock projects.

Mr. Crabtree pointed out that there were benches that increased the width of the dock to 6ft where 4ft is the maximum per the regulations, and Mr. Burgess stated that, if it were a sticking point, they could remove the benches. Mr. Donovan stated that he was not in favor of docks within mapped shellfish areas as it was prohibited per the regulations. Mr. Pastuszak explained that he was not confident in the accuracy of the surveys since they are conducted at different times of the year and with different methods. Mr. Burgess responded that they always tried to reduce the number of variables to make these surveys more accurate, but reiterated that they were willing to offer onsite shellfish mitigation as well as extensive shellfish monitoring. Mr. Crabtree stated that he would like to see if similar shellfish surveys for nearby properties had resulted in similar findings. Ms. Usowski stated that she could look into it, but that in the future they could stipulate seasonality for initial surveys. Mr. Chase added that he was also not confident in the accuracy of the shellfish surveys that had been submitted, and stated that the Commission should set more definitive criteria for shellfish surveys in the future. Mr. Burgess argued that, despite not meeting the bylaws requirement for no docks in shellfish habitat and no loss of salt marsh, this design did meet all of the other performance standards for docks that were set by the Bylaw and the WPA (Wetland Protection Act). He added that variances had been granted from these Bylaws for multiple projects in the recent past. After some discussion regarding the regulations set by the WPA versus those set by the Bylaw and what the process would be if the Commission denied the project under these regulations, Ms. Michele Hunton, Attorney with Rubin and Rudman, offered her opinion of the law, stating that if a denial was appealed, the court and DEP would look at whether the project met the standards set by the WPA and Bylaw, not the opinions of the Commission. Mr. Burgess requested a continuance to the November 20, 2019.

Mr. Chase moved to continue the hearing to November 20, 2019. Seconded by Mr. Pastuszak. Motion carried unanimously.

**Alfred & Carol Novak, 30 Harbor Rd, Map 15 Parcel U15-A.** Pier, ramp, float and dredging.

Mr. Burgess and Ms. Hunton presented the revised project, explaining that they had been asked at a meeting earlier in the year to come up with a plan that would eliminate the need for intertidal dredging, but that this plan was not well received by the Commission or the Waterways Committee, so they had returned to Design #6 which had originally been presented in January of 2019. Mr. Burgess stated that the Waterways Committee had approved this version of the project. Ms. Usowski reviewed her comments on the project from the initial hearing about this revision, stating that the project would be within a Town and State mapped shellfish area and that the survey suggested that this was suitable shellfish habitat, that the applicant had not proven that the project would not have an adverse impact to salt marsh, that the width of the proposed storage benches exceeded the maximum 4ft width, and that the design could have an adverse impact on the coastal beach, and thus a potential adverse impact on wildlife and marine fisheries. For these reasons, Ms. Usowski recommended a denial of the project under the WPA and Town Bylaw.

Ms. O’Leary commented that she was not in favor of dredging coastal beach to create land under ocean. Mr. Donovan stated that he would like to see a larger minimum spacing between docks in future regulations. Ms. Hunton stated that, if it were appealed to the DEP and the Superior Court, she was confident that this project would receive approval, as the denial would likely be considered arbitrary and capricious since it was the last property on the harbor without a dock. Mr. Chase responded that this property had functional, viable shellfish habitat that was to be dredged and changed, which was the difference between this project and past approvals.

Mr. Donovan moved to deny the Notice of Intent under the Harwich Water Dependent Structures Bylaw Ch. 304-8(B), 304-8(D), 304-8(G) and 304-8(H); under the Harwich Wetland Protection Regulations 1.10(3)(b)(2), 1.10(3)(B)(4), 1.10(3)(B)(7), 1.10(3)(12), 1.10(3)(B)(8); under the Harwich Wetlands Protection Bylaw 310-2(A)(Recreation), 310-2(A)(Fisheries), and 310-2(A)(Wildlife Habitat); and under the Massachusetts Wetlands Protection Act 310 CMR 10.25, 310 CMR 10.27, 310 CMR 10.32, 310 CMR 10.33, and 310 CMR 10.34. Seconded by Mr. Pastuszak. Motion carried, 5-1, Mr. Coleman opposed.

**Swavi Osev, 197 Rt 28, Map 11 Parcel U3-C.** Demolish existing structures and construct a new dwelling.

*Ms. O’Leary abstained.*

Mr. Rick Judd, Moran Engineering, and Mr. Swavi Osev presented the project, explaining that this project was only within an AE 11 Flood Plain, with no other resource areas in the vicinity. Ms. Usowski asked if the applicant knew the age of the structures on the property, and Mr. Judd responded that they did not, but that they would follow up with the Historic Commission if necessary. Ms. Usowski stated that she would be in favor of the project as long as the applicant was willing to try to preserve some of the existing vegetation on the property, and that the applicant agreed to install a limit of work prior to starting the project.

Mr. Donovan commented that he would like them to comply with the fertilizer and chemical prohibition. David Turpin, abutter, stated that he would like to make sure that the landscaping business did not extend to this property as well, as the property directly on Route 28 was Commercial. Ms. Usowski explained that that concern would be more for the Zoning Board.

Mr. Ketchum moved to approve the Notice of Intent. Seconded by Mr. Donovan. Motion carried 5-1, Ms. O’Leary abstained.

**John & Ileana Chandler, 115 Sequattom Rd, Map 102 Parcel N5-2.** Dock.

Mr. Matt Farrell, O’Reilly and Associates, explained that this was an application to permit an existing dock. Mr. Farrell gave the Commission an overview of the existing dock. Ms. Usowski explained that the deck and landing that were there would not have been permitted with current regulations, but it was possible that those structures predated those regulations, and went on to explain that the dock should be brought up to current performance standards where possible. Ms. Usowski stated that she would like to get some more information on when the dock and other structures were put in, and would like feedback from the Waterways Committee before she gave a recommendation on this project.

Mr. Donovan stated that he would like to see the dock come into compliance with current regulations. Mr. Ketchum asked what their plans were with the other dock that is not accounted for on the plan, and where they planned to store the docks in the off-season. Mr. Farrell responded that he would look into the other dock or structure, and that they would look to store the dock on the deck areas. Mr. Ketchum asked that he also add the length of the walkway and area of the landing at the end to the plan. Mr. Chase stated that the existing decks would cause adverse habitat impacts in his opinion, so he was not sure if he could be in favor of allowing them to remain. Mr. Farrell requested a continuance to October 16, 2019.

Mr. Chase moved to continue the hearing to October 16, 2019. Seconded by Mr. Pastuszak. Motion carried unanimously.

**William Gibson, 14 Sequattom Rd, Map 101 Parcel R-3.** New Dwelling.

Mr. Farrell and Bill Gibson, owner, introduced the project, which would involve removing an existing dwelling and septic system, and replacing it with a new dwelling and appurtenances. The proposed limit of work would be set at 51.7ft from the BVW, and there was a stone patio proposed at 53ft from the BVW, but there would be minimal contour changes. Mr. Farrell gave more detail on the proposed mitigation plan for the project. Ms. Usowski informed the applicant that there was a no-new-structure regulation within 60ft of a resource area, which would include the patio, so they would need to request a variance to keep the proposed patio. Ms. Usowski asked if the invasive removal would be over the entire site, and the applicant responded that it would. Ms. Usowski went on to ask if the ramp and landing had been approved administratively, and Mr. Gibson stated that they had only started to replace what had been there previously. Ms. Usowski stated that the walkway did not look to be more than 4ft wide, so they could include it with this application, but asked if they knew if the existing dock had been permitted. Mr. Gibson responded that they were in the process of putting together an application for the dock.

Mr. Crabtree and Mr. Donovan asked for more information on the proposed mitigation plan, which Mr. Farrell provided. Mr. Coleman asked if the three large oaks close to the proposed location would be removed, and Mr. Gibson responded that they would likely need to be removed. Mr. Coleman asked what their preference would be for either removing or reconfiguring the patio to get it out of the 60ft no-disturb-zone, and Mr. Gibson responded that they would like to keep the patio where it was if possible, but make it pervious. Mr. Coleman added that they would likely need a retaining wall of sorts to keep the patio level. Ms. O’Leary stated that she was not opposed to a variance for the patio. Mr. Chase disagreed, stating that he felt a hardship was needed to grant a variance for the 60ft no-disturb-zone, and added that he would like to see additional conversion of lawn to natural areas as mitigation rather than invasive removal. David Byron, abutter, asked that the Town also look into removing some of the invasive trees from along the bike path that abuts the property. Joyce Bearse, abutter, voiced her support for the project. Mr. Farrell requested a continuance to November 6, 2019.

Mr. Chase moved to continue the hearing to November 6, 2019. Seconded by Mr. Donovan. Motion carried unanimously.

**Joseph Preston, 0 Sequattom Rd, Map 101 Parcel W2-C.** Storm damage repairs.

The applicant had requested a continuance to October 16, 2019. Ms. Usowski stated that if the applicant was not prepared to be heard at the next meeting, she would ask that they continue indefinitely.

Mr. Chase moved to continue the hearing to October 16, 2019. Seconded by Mr. Pastuszak. Motion carried unanimously.

**ANY OTHER BUSINESS BEFORE THE COMMISSION**

Mr. Coleman asked about the status of mosquito control efforts at the Bells Neck Bogs, and Ms. Usowski explained that she was working with Heinz Proft, Natural Resource Director, and Cape Cod Mosquito Control to come up with an effective plan which included removal of boards to alter water levels. Mr. Chase expressed his concern with juvenile herring being affected by these changes. Ms. Usowski stated that she could schedule a site visit for Commission members to view the bogs, and that she had added the topic to the next meeting for discussion as well.

Mr. Donovan asked that they add potential revisions to the Regulations and Bylaw to an upcoming agenda for discussion.

**Adjournment**

**Motion to adjourn by Ms. O’Leary and seconded by Mr. Ketchum. Motion approved unanimously.**

**Meeting adjourned at 9:28PM.**

Respectfully submitted,   
Melyssa Millett

Approved: 09/21/2022